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Daud Pasarrin v Public Prosecutor

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COURT OF APPEAL (KUCHING) — CRIMINAL APPEAL NO Q-05(M)-183–07 OF 2015
TENGKU MAIMUN, ABANG ISKANDAR AND AHMADI ASNAWI JJCA
26 MAY 2016

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Criminal Law — Murder — Defence — Appellant charged with murder — Appellant pleaded defence of grave and sudden provocation and self-defence — Whether defence of grave and sudden provocation proven — Whether self-defence proven — Whether appellant exceeded limits of self-defence — Whether failure of trial judge to consider evidence of expert occasioned miscarriage of justice

D

Criminal Procedure — Appeal — Appeal against conviction and sentence — Appellant charged for murder — Whether trial judge evaluated evidence and applied legal principles correctly — Whether there was appealable error committed by trial judge — Evidence Act 1950 s 105 — Penal Code ss 96, 102 & 302

E

The appellant was charged with the murder of one Daud Duma ('the deceased') under s 302 of the Penal Code ('the Code'). The appellant's evidence was that the deceased had called him and his parents 'dogs' in a rude and loud manner. The appellant's defence had been premised on self-defence and grave and sudden provocation. Based on the evidence of PW13 who conducted the post-mortem, the cause of death was neck injury due to sharp force trauma. At the end of the trial, the learned trial judge convicted the appellant of the offence and sentenced him to death pursuant to s 302 of the Code, hence this appeal. The appellant submitted that it was not the defence case that the appellant did not kill the deceased but the defence pleaded had been self-defence, sudden fight and grave provocation. The appellant further submitted that the learned trial judge never evaluated the evidence and report by the psychiatrists to show that the appellant was a credible witness and would not have been coached. On the other hand, the respondent submitted that the appellant had failed to prove the defence of sudden fight, self-defence and grave and sudden provocation.

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Held, dismissing the appeal and affirming both conviction and sentence by the learned trial judge:

(1) Pursuant to s 105 of the Evidence Act 1950, the onus lies with the accused person to show to the court the circumstances of justifying

self-defence and grave and sudden provocation and that the law does not presume the existence of those circumstances (see para 25).

(2) The appellant had admitted that he was not angry, though he felt insulted. In fact he was normal. In other words, he did not lose his self-control as a result of use of the word 'dogs' by the deceased to describe him and his parents. The court agreed with the learned trial judge that the appellant had failed to establish the defence of grave and sudden provocation on the balance of probabilities (see para 30).

(3) The court agreed with the learned trial judge that based on the nature and the number of the injuries suffered by the deceased, the appellant had exceeded the limits of self-defence. The injuries in themselves were damning against the appellant. In total there were 49 injuries and six of those were defensive wounds and some were incised wounds. Further, there was evidence that the appellant had managed to disarm the deceased and yet he had continued to slash at him. The moment the appellant had disarmed the deceased, he should have desisted from further attacking him with the parang (see paras 33 & 35).

(4) Insanity was never raised as a defence, thus the omission on the part of the learned trial judge to address on the evidence of the two psychiatrists had not occasioned any miscarriage of justice to the appellant so as to vitiate the conviction entered against him (see para 37).

[Bahasa Malaysia summary

Perayu dituduh membunuh seorang yang bernama Daud Duma ('si mati') di bawah s 302 Kanun Keseksaan ('Kanun'). Keterangan perayu adalah bahawa si mati telah memanggil dia dan ibubapanya 'dogs' dalam cara biadap dan kasar. Pembelaan perayu adalah berdasarkan pertahanan diri dan bangkitan marah besar dan mengejut. Berdasarkan keterangan PW13 yang menjalankan autopsi, sebab kematian adalah kecederaan leher akibat trauma benda tajam. Pada akhir perbicaraan, hakim perbicaraan yang bijaksana mensabitkan perayu terhadap kesalahan dan menjatuhkan hukuman mati berikutan s 302 Kanun, maka rayuan ini. Perayu berhujah bahawa ia bukan kes pembelaan bahawa perayu tidak membunuh si mati tetapi pembelaan yang diplidkan adalah pertahanan diri, pergelutan mengejut dan bangkitan marah besar. Perayu selanjutnya berhujah bahawa hakim perbicaraan tidak pernah menilai keterangan dan laporan oleh psikiatri untuk menunjukkan bahawa perayu adalah saksi yang boleh dipercayai dan mungkin tidak diajar. Sebaliknya, responden berhujah bahawa perayu telah gagal untuk membuktikan pembelaan pergelutan mengejut, pertahanan diri dan bangkitan marah besar dan mengejut.

Diputuskan, menolak rayuan dan mengesahkan kedua-dua sabitan dan hukuman oleh hakim perbicaraan yang bijaksana:

(1) Berikutan s 105 Akta Keterangan 1950, beban adalah terletak dengan tertuduh untuk menunjukkan kepada mahkamah keadaan menjustifkasikan pertahanan diri dan bangkitan marah besar dan mengejut dan bahawa undang-undang tidak menganggap kewujudan keadaan tersebut (lihat perenggan 25).

(2) Perayu mengaku bahawa dia tidak marah, walaupun dia berasa dihina. Sebenarnya dia adalah normal. Dalam perkataan lain, dia tidak hilang kawalan dirinya akibat penggunaan perkataan 'dogs' oleh si mati untuk mengecapnya dan ibubapanya. Mahkamah bersetuju dengan hakim mahkamah perbicaraan bahawa perayu telah gagal untuk membuktikan pembelaan bangkitan marah besar dan mengejut atas imbangan kebarangkalian (lihat perenggan 30).

(3) Mahkamah bersetuju dengan hakim perbicaraan yang bijaksana bahawa berdasarkan sifat dan beberapa kecederaan yang dialami oleh si mati, perayu telah melebihi had pertahanan diri. Kecederaan itu sendiri kritikal terhadap perayu. Jumlah keseluruhan adalah 49 kecederaan dan enam daripadanya adalah luka pertahanan dan beberapa adalah luka yang ditoreh. Selanjutnya, terdapat keterangan bahawa perayu telah dapat melepaskan si mati dan tetapi dia berterusan mengelar si mati. Ketika perayu telah melepaskan si mati, dia patut berhenti daripada menyerang dia seterusnya dengan parang (lihat perenggan 33 & 35).

(4) Tidak siuman tidak pernah dibangkitkan sebagai pembelaan, oleh itu ketinggalan oleh pihak hakim perbicaraan yang bijaksana untuk mempertimbangkan atas keterangan mengenai dua psikiatri tidak menyebabkan apa-apa ketidakadilan kepada perayu sebagai untuk menjadikan tidak sah sabitan yang dikenakan terhadapnya (lihat perenggan 37).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (5th Ed, 2015) paras 301–419.
For cases on defence, see 4(2) *Mallal's Digest* (5th Ed, 2015) paras 1756–1805.

Cases referred to

Balachandran v PP [2005] 2 MLJ 301; [2005] 1 CLJ 85, FC (refd)
Ikau anak Mail v PP [1973] 2 MLJ 153, FC (refd)
Lorensus Tukan v PP [1988] 1 MLJ 251; [1988] 1 CLJ Rep 162, SC (refd)
Rikky Purba v PP [2014] 4 MLJ 569; [2014] 3 CLJ 607, CA (refd)
Syed Ali bin Syed Abdul Hamid & Anor v PP [1982] 1 MLJ 132; [1982] CLJ Rep 340, FC (refd)

Legislation referred to

Penal Code ss 96, 102, 302

Appeal from: Crminal Trial No SBW-45–7/4 of 2014 (High Court, Sibu)

Ranbir Singh Sangha (Ranbir S Sangha & Co) for the appellant.
Awang Armadajaya bin Awang Mahmud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Abang Iskandar JCA (delivering judgment of the court):

[1] Daud Pasarrin ('the accused person') had stood charged before the High Court sitting at Sibu, Sarawak, for the murder of Daud Duma. The charge against him reads as follows:

> That you, Daud Pasarrin (M) (Passport No. MA 068618) on the 20th July, 2013, at about 2.30 p.m. at Rumah Pekerja Kem Pembalakan Penyuan Shin Yang, Belaga, in the district of Belaga, in the State of Sarawak, did commit murder by causing the death of Daud Duma (M) (Passport No. W 585201), and that you thereby committed an offence punishable under section 302 of the Penal Code.

BRIEF FACTS OF THE CASE

[2] The brief facts may be stated as follows: At the material times, according to Agus Tina Semon ('PW3') she had lived with her husband in a shared worker quarters where her husband was working, together with Daud Duma ('the deceased') and Daud Pasarrin, the accused person. The accused person is PW3's brother in law.

[3] On 20 July 2013 at about 1pm, PW3 went to the canteen nearby the quarters to take food supply. At that time, there were only the accused person and deceased inside the quarters.

[4] When she came back after 20 minutes, she heard noises and sound of somebody was running inside the quarters. She was scared and ran to the workshop for help. There she met Lau Ing Tieu ('PW4'). The workshop was about 15 minutes walking distance from the quarters.

[5] PW4 testified that after being informed by PW3, he called Sarjan Suloon ak Gat ('PW10') who was at Anding Canteen at that time with Sarjan Nevyn ak Kedit ('PW9'). PW4 went there to fetch PW10 and PW9 and proceeded to the quarters in PW4's car.

[6] PW10 and PW9 testified that they arrived at the quarters at about 2.30pm. As the door was locked from inside, they looked through the window and saw the accused person was walking inside the quarters and that he was holding a *parang*.

[7] PW10 and PW9 then forced opened the door. At that time, the accused was lying near the *parang*. They also saw the deceased lying on the floor heading to the kitchen room. They arrested the accused and later identified him as Daud Pasarrin.

[8] The accused person was later charged for the murder of the deceased as per above-mentioned charge.

THE DEFENCE

[9] At the end of the prosecution case, the High Court found a prima facie case had been made out by the prosecution. The accused person was ordered to enter on his defence. The defence mounted by the accused person had been premised on self-defence and of grave and sudden provocation.

[10] It was the accused person's evidence that the deceased had called him and his parents 'dogs' in a rude and loud manner. The deceased was the one who started to attack the accused person by swinging a *parang* at the accused person's head but missed. Both of them struggled and according to the accused person, he managed to get hold of the *parang*. The accused person then slashed the deceased a number of times with the *parang*.

[11] Dr Norliza bt Ibrahim ('PW13'), who conducted the post-mortem on the deceased's body, had testified that the cause of death was neck injury due to sharp force trauma.

FINDINGS OF THE LEARNED HIGH COURT JUDGE AT END OF DEFENCE CASE

[12] The learned High Court judge at the end of the defence case, found the accused person guilty as per charged and had proceeded to convict him. The accused was sentenced to death as mandated by law as contained under s 302 of the Penal Code.

[13] Aggrieved by such decision by the learned High Court judge, the accused person had lodged his appeal against the said decision. Hence, this appeal before us.

THE APPEAL

[14] Before us, it was indicated to us quite frankly by Mr Ranbir Singh Sangha, learned defence counsel that it was not the defence case that the accused person did not kill the deceased on that fateful day. The defence pleaded had been self-defence and sudden fight and grave provocation.

[15] Mr Ranbir Singh Sangha submitted that the learned trial judge did not consider the evidence that the deceased still continued attacking the accused after the accused had obtained the *parang* and the fact that the deceased tried to snatch the *parang*.

[16] The learned trial judge also did not consider that not only the words uttered by the deceased but also the action of the deceased in swinging the *parang* at the accused amounted to grave and sudden provocation.

[17] It was also the complaint by the defence counsel that the learned trial judge never evaluated the evidence and report by the psychiatrists namely Dr Lau Kim Kah ('DW2') and Dr Emmanuelle Joseph Pereira ('DW3') to show that the accused was a credible witness and would not have been coached.

[18] The deputy public prosecutor on the other hand submitted that the defence did not meet the pre-requisites of a defence of a sudden fight namely:

(a) there is fight that started from the deceased;

(b) the accused was not exercising his right of private defence;

(c) the accused did not have undue advantage or acted in a cruel manner; and

(d) the deceased contributed to the fight and invited its escalation.

[19] It was also submitted by the learned deputy that the defence had failed to fulfil the four cardinal justification before the killing can be justified in a plea of self-defence as follows:

(a) the accused must be free from fault in bringing about the encounter;

(b) there must be present an impending peril to life or of great bodily harm either or so apparent;

(c) there must be no safe or reasonable mode of escape by retreat; and

(d) there must have been a necessity of taking life.

[20] The prosecution also submitted that the defence failed to make out the defence of grave and sudden provocation as there was no provocation at all. If there had been any, it was neither grave nor sudden.

OUR FINDINGS

[21] After considering the records of appeal and submissions by both parties, we were unanimously of the view that the appeal was without merit, thus we had dismissed the appeal. The conviction entered by the learned High Court judge on 29 June 2015 against the accused person was safe to be affirmed and the death penalty followed thereof was also affirmed. These are now our grounds having so decided.

[22] First, we need to reiterate that on the evidence as led by the prosecution, we were satisfied that the learned trial judge was correct in calling the accused person to enter on his defence to the charge of murder. Murder, as simply stated means intentional killing of a person without any lawful excuse. Evidence had indeed shown that the killing of the deceased by the accused person had not been an accident, nor had it been a result of a mistake on the part of the accused person. Otherwise it would have been a total exoneration of the accused person. Indeed the accused had not disputed the fact that he had killed the deceased. On the prima facie level, the charge for murder had been made out by the evidence as led by the prosecution. The applicable test that is in play at the end of the prosecution case as enunciated in the case of *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85 had been fulfilled. We agreed with the learned trial judge that on the evidence as it stood at the end of the prosecution stage, was such that if the accused person were to elect to remain silent if called to enter on his defence, such evidence was strong enough to found a conviction to be entered against him. As such, the prosecution was correct to say that the defence had rightly been called by the learned trial judge for the offence of murder.

[23] At the beginning of the appeal before us, besides indicating to us that the accused person did not dispute having killed the deceased. Learned counsel for the accused person had also submitted before us that he was only pursuing the defence of self-defence and the defence of grave and sudden provocation and that it was his client's case that the learned trial judge was in error when he ruled that the accused person had failed to avail himself of the benefit of those two legal defences as provided under the Penal Code.

[24] We had perused the grounds of judgment of the learned trial judge and noted that he had addressed the law on the specific defences which the accused person had sought to rely on in order to escape from being found guilty of the

murder of Daud Duma, the deceased. It must be stated here that the learned trial judge had delved into some detail on the applicable legal principles in play in the trial before him.

[25] It is pertinent to recall that the onus lies with the accused person to show to the court the circumstances of justifying self-defence and grave and sudden provocation and that the law does not presume the existence of those circumstances (see s 105 of the Evidence Act 1950). What that means, in effect, is that the accused person will have to rebut that presumption by proving that the circumstances did indeed exist, thus justifying his act of killing the deceased. As like all cases involving rebuttal of a statutory presumption, the accused person will have to lead evidence on the balance of probabilities, in doing so. Just by merely raising or creating a reasonable doubt as to the existence of those circumstances will not, in law, be sufficient in order for the accused person to find sanctuary under those two defences.

[26] Having dealt with that, we will deal with the first defence of grave and sudden provocation. The learned trial judge found that the accused person had failed to establish this defence. We had looked at his reason for rejecting the accused person's defence. That had brought us to para 31 in his grounds of judgment. With respect, we found nothing amiss in the manner as to how he had arrived at his conclusion, bearing in mind the evidence he had before him. The law, as earlier stated was clear. The provocation must be grave and it must be sudden. The rationale being that such a situation would cause even a reasonable man to momentarily lose his self-control over his emotions and to then act in a manner detrimental to the victim. The learned trial judge had alluded to the correct test in determining whether or not grave and sudden provocation existed in a given circumstances by referring to the case of *Lorensus Tukan v Public Prosecutor* [1988] 1 MLJ 251; [1988] 1 CLJ Rep 162 where it was held as follows:

> The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control (see *KM Nanavati vs State Of Maharashtra* 1962 AIR 605).

[27] See also the case of *Ikau anak Mail v Public Prosecutor* [1973] 2 MLJ 153 where the Federal Court had also reiterated similar view on the matter of grave and sudden provocation. Dr Hari Gour, in his acclaimed work embodied in the book *Penal Law of India*, Vol 3 (1st Ed) at p 2011, had likened the immediate preceding act amounting to a 'grave and sudden provocation' as a situation akin to the proverbial last straw that breaks the camel's back. The learned authors of Ratanlal and Dhirajlal in the *Law of Crimes* had also commented that 'in determining that question the court may also consider, along with other factors, the nature of the retaliation by the accused, having

regard to the nature of the provocation'.

[28] Applying this test to the facts as could be deduced from the evidence adduced before him, the learned trial judge had concluded that there was no grave and sudden provocation known in law that could be established therefrom. In coming to that conclusion, he had alluded to the evidence coming from the accused person himself. It was impressed upon us that the reason behind the accused person's fatal blows with the *parang* against the deceased had been because of the so-called derogatory words allegedly used by the deceased in describing the accused person and his parents as 'dogs'. However, the evidence had suggested nothing of that sort. The learned trial judge had adverted to that part of the evidence in his grounds of judgment in para 31 as follows:

Q1006:	What did Daud Duma do after you asked him this question?
A:	He called me a dog (anjing).
Q1007 :	Did he say anything after he called you a dog?
A:	He also called my parents as dog.
Q1008:	When you called you and your parents 'dogs', in what tone of voice was he speaking in?
A:	He said it very rudely.
Q1009:	Did he say it softly or loudly?
A:	Loudly.
Q1010:	Did you take what he said about you and your parents as an insult?
A:	Yes, I did.
Q1011:	How did you feel what he had said about you and your parents?
A:	I felt normal.
Q1012:	Did you have any feel of shame that been insulted?
A:	I did not.
Q1013:	Did you feel angry?
A:	I didn't.

[29] Premised upon that consideration, the learned trial judge had concluded as follows:

> [31] From the evidence adduced, it is clear that when the deceased called the accused and his parents as dogs, the accused said that although he felt ashamed, he was normal. It meant that he still had self-control and that he was not 'provoked'.

[30] With respect, we did not see any error in the learned trial judge's conclusion on the matter of the defence of grave and sudden provocation that was raised by the accused person. The accused person had admitted that he was not angry, though he felt insulted. In fact he was normal. In other words, he did not lose his self-control as a result of use of the word 'dogs' by the deceased to describe him and his parents. We agreed with the learned trial judge that the accused person had failed to establish this defence on the balance of probabilities. We therefore saw no merit in the complaint against the conclusion made by the learned trial judge in that regard by learned counsel.

[31] As regard the defence of *self-defence*, the law as contained under the Penal Code is also clear. The right of private defence resides in s 96 of the Penal Code. That section stipulates that 'Nothing is an offence which is done in the exercise of the right of private defence'. The right covers both the defence of property as well as of the person, from unjustified intrusion. Again the onus lies with the accused person to show to the court that such circumstances existed thereby bringing his case within the general exception in the Penal Code, including the defence of self-defence, (see also the case of *Rikky Purba v Public Prosecutor* [2014] 4 MLJ 569; [2014] 3 CLJ 607). We noted that the learned trial judge had stated the law correctly in paras 34–40 in his grounds of judgment. We did not propose to add on to what had been rightly spelt out by him in those paragraphs referred to above. Suffice to say that the right of self-defence is not a carte blanche right to unnecessarily inflict bodily harm or injury onto others at the slightest opportunity. Indeed the law has set out strict parameters within which that right may be invoked and when it should cease to be pursued by the accused person. Among others, in the context of this case before us, there must exist the necessity to take away a person's life. As such, that right of self-defence does not extend to inflicting more harm than is necessary. Section 102 of the Penal Code expressly stipulates:

> The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

[32] Essentially it is but a shield, and only in grave circumstances can it legitimately partake or assume, as it were, the role of a sword. The exercise of that right is therefore fully circumscribed. It is a right born out of necessity in the form of self-help to protect oneself from harm's or danger's way.

[33] On the evidence, the learned trial judge rejected the accused person's defence of self-defence. In brief, going by the nature and the number of the injuries suffered by the deceased, he was of the view that the accused person had exceeded the limits of self-defence. His conclusion can be found in para 50 of his grounds of judgment like so:

> By looking at the nature and numerous injuries sustained by the deceased in this case, this court finds that the existence of the substantial number of injuries suffered by the deceased, clearly showed that the accused had inflicted more harm than it is necessary to inflict for the purpose of his self-defence. It is clear that the accused has already over powered the deceased and had possession of the said *parang* and thus there was no necessity for the accused to inflict further and numerous other injuries on the deceased. There were six defensive wounds and 43 other injuries found on the deceased's body thus meaning that the accused has inflicted 49 wounds on the deceased which showed that the accused had inflicted much force and/or injuries than was necessary to defend himself bearing in mind that those injuries were inflicted at the material time when the accused had possession of the said *parang* and the deceased had no weapon.

[34] The learned trial judge then concluded that the accused person had exceeded the limits of his right of self-defence 'as reasonable apprehension of danger or an imminent threat to the accused's life had ceased after he obtained possession of the said *parang*' (see para 51 of his grounds of judgment).

[35] We had occasion to peruse the relevant evidence pertaining to this defence raised by the accused person. In the result, we saw no reason whatsoever to differ in our finding from that of the learned trial judge. The injuries in themselves were damning against the accused person. They had been described and explained by the pathologist SP13. In total there were 49 injuries and six of those were defensive wounds and some were incised wounds. Those wounds spoke volumes as to what had happened within the confined walls of the quarters on that fateful day. There was evidence that the accused had managed to disarm the deceased and yet he had continued to slash at him. That must account for the numerous defensive wounds that were suffered by the deceased. The law as contained under s 102 of the Penal Code says that once the reasonable apprehension of threat or danger to life and limbs presents itself, the right of self-defence arises and it continues for as long as such threat or danger persists. But once the threat or danger is subdued or diminished, then continued exercise cannot find legitimate support. From the evidence as adduced in this appeal before us, it was clear to us that the moment the accused person had disarmed the deceased, he should have desisted from further attacking him with the *parang*. But instead, as evidenced by the numerous injuries, the accused person had inflicted such injuries as to ultimately kill him. In truth, the accused had attacked an unarmed and defenceless person, as evidenced by what SP13, the pathologist, described as defensive wounds. Those wounds showed that the deceased had only his hands to ward off the *parang* attack by the accused person on him. There was no evidence that those wounds suffered by the deceased were self-inflicted, as indeed, that was not the case advanced by the accused person. In light of the numerous injuries suffered by the deceased, it was understandable that the inferences as derived therefrom by the learned trial judge were so clearly justified. It would be so incredible that

those injuries were inflicted on the deceased so as to prevent him from snatching the *parang* away from him. The pathologist's independent evidence on the numerous injuries sustained by the deceased had completely negated the accused person's suggestion of aggression coming from the deceased in the direction of the accused person. Indeed, the evidence had shown that the reverse had been nearer to the truth. It was proven beyond any reasonable doubt that it was the accused person who was the aggressor.

[36] It did not escape our notice as well that in his defence, the accused person said that he only swung and slashed the *parang* at the deceased a mere four times, namely three times in the front and one time at the back (see notes of proceeding, as at p 222, record of appeal Vol 1). Of course, in light of the overall evidence, it was not disputed that there were 49 injuries in all found on the person of the deceased's body, upon an autopsy conducted on it by SP13, the pathologist. Clearly, the accused person had lied on this issue in trying to downplay the extent of his vicious attack against the deceased with the *parang*. The Federal Court, in the case of *Syed Ali bin Syed Abdul Hamid & Anor v Public Prosecutor* [1982] 1 MLJ 132; [1982] CLJ Rep 340 had occasion to say as follows, at p 135 (MLJ); pp 345–346 (CLJ):

> Apart from the fact that appellant No (2) had possession and control of the car during the relevant period, ie between the evening of August 13 and forenoon of August 15 1977 and the fact that he had opportunity to conceal the opium in the car during the period, there are two other circumstances which go to show that appellant No (2) had the necessary knowledge. We recall that he told PW4 that the purpose of borrowing the car was to go to Trengganu. This was a deliberate lie as he never intended to go to Trengganu at all but to Singapore, which he did. We also recall that he told PW4 that he needed the car for two days. And as such there was no reason at all for him to see PW4 again in the evening of August 14 for permission to use it further on August 15. Such permission was already given to him. In other jurisdictions a false statement made by an accused person concerning the surrounding circumstances in which an offence was committed whilst he had an opportunity to commit the offence can be regarded as a corroboration of the evidence against him. *Eade v R* (1924) 34 CLR 154 and also *Regina v Lucas (Ruth)* [1981] 3 WLR 120. We accept the decisions in these cases to be good law. In this case we hold that the representation he made to PW4 regarding the purpose of borrowing the car was a deliberate lie and is therefore a corroborative evidence against him for which he must explain. Such lie is a reflection of his consciousness of guilt as regards the use he intended to make of the car in question.

[37] There was one other issue that was raised before us during oral submissions by learned counsel. It was submitted before us that the learned trial judge had failed to take into account the evidence of the two psychiatrists who had examined the accused person. It was submitted before us that these two psychiatrists' evidence would have borne out the fact that the accused person to be a credible person, worthy of belief. Suffice for us to state here that

in light of the overwhelming evidence especially pertaining to the evidence of the pathologist ('SP13') and the silent evidence surrounding the 49 injuries sustained by the deceased, and the evidence of the accused person himself as was alluded to by the learned trial judge in para 31 of his grounds of judgment, the evidence of the two psychiatrists would not, with respect, count for much in forwarding the case of the accused person. It was noted by us as well that insanity was never raised as a defence. In other words, nothing turned on that argument raised by learned counsel in light of the totality of the evidence adduced before the learned trial judge. To our mind, the omission on the part of the learned trial judge to address that issue had not occasioned any miscarriage of justice to the accused person so as to vitiate the conviction entered against him.

[38] On the whole, we could not find any reason to depart from the findings made by the learned trial judge on the pertinent issues raised in the case before him. He had handled the evidence and applied the legal principles correctly to the evidence adduced before him. We were therefore of the view that no appellate intervention was in order, as there was no appealable error having been committed by him.

[39] In the result, we agreed with the learned trial judge that the prosecution had succeeded in proving the charge for murder against the accused person beyond reasonable doubt. The accused person had failed to prove his defences on the balance of probabilities and he had also failed to raise any reasonable doubt as to his guilt. We endorsed the learned trial judge's conclusion as contained in para 54 and his final order in para 55 of his grounds of judgment.

[40] In the upshot therefore, we had dismissed the appeal by the accused person, as it had been one that was without any merit. We had also affirmed both his conviction for murder as per the charge and the sentence by hanging as ordered by the learned trial judge. We had so ordered accordingly.

Appeal dismissed and both conviction and sentence by learned trial judge affirmed.

Reported by Dzulqarnain Ab Fatar